

AMENDED IN SENATE JULY 7, 1998
AMENDED IN SENATE JUNE 16, 1998
AMENDED IN SENATE JULY 18, 1997
AMENDED IN ASSEMBLY JUNE 2, 1997
AMENDED IN ASSEMBLY MAY 27, 1997
AMENDED IN ASSEMBLY APRIL 21, 1997
AMENDED IN ASSEMBLY MARCH 31, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 131

Introduced by Assembly Member Ortiz

January 15, 1997

An act to add Section 1203.049 to the Penal Code, and to amend Section 10980 of the Welfare and Institutions Code, relating to fraud.

LEGISLATIVE COUNSEL'S DIGEST

AB 131, as amended, Ortiz. Food stamps: fraud: penalties.

Existing law provides for the federal Food Stamp Program, under which each county distributes food stamps provided by the federal government to eligible households. Existing law establishes criminal penalties for violation of certain provisions relating to the fraudulent appropriation of food stamps and the unauthorized use, transfer, sale, purchase, or possession of food stamps.

This bill would provide that if a violation of provisions relating to food stamps is committed by means of an electronic transfer of benefits, then, depending on the amount of the benefits involved, a court shall impose additional terms in state prison *only if the defendant has not been punished by an additional term of imprisonment under another provision of law for a violation of these provisions*. The bill would also prohibit probation from being granted to any person who violates certain provisions relating to food stamps when the violation has been committed by means of an electronic transfer of food stamp benefits and the amount of the benefits exceeds \$100,000. By changing the penalty for certain crimes, this bill would impose a state-mandated local program.

This bill would incorporate additional changes in Section 10980 of the Welfare and Institutions Code proposed by AB 2772, to be operative if AB 2772 and this bill are both enacted and become effective on or before January 1, 1999, and this bill is enacted last.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1203.049 is added to the Penal
2 Code, to read:
3 1203.049. (a) Except in unusual cases where the
4 interest of justice would best be served if the person is
5 granted probation, probation shall not be granted to any
6 person who violates subdivision (f) or (g) of Section 10980
7 of the Welfare and Institutions Code, when the violation
8 has been committed by means of the electronic transfer
9 of food stamp benefits, and the amount of the
10 electronically transferred food stamp benefits exceeds
11 one hundred thousand dollars (\$100,000).

(b) The fact that the violation was committed by means of an electronic transfer of food stamp benefits and the amount of the electronically transferred food stamp benefits exceeds one hundred thousand dollars (\$100,000) shall be alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(c) If probation is granted, the court shall specify on the record and shall enter on the minutes indicating that the interests of justice would best be served by that disposition of the care.

SEC. 2. Section 10980 of the Welfare and Institutions Code is amended to read:

10980. (a) Any person who, willfully and knowingly, with the intent to deceive, makes a false statement or representation or knowingly fails to disclose a material fact in order to obtain aid under the provisions of this division or who, knowing he or she is not entitled thereto, attempts to obtain aid or to continue to receive aid to which he or she is not entitled, or to receive a larger amount than that to which he or she is legally entitled, is guilty of a misdemeanor, punishable by imprisonment in the county jail for a period of not more than six months, a fine of not more than five hundred dollars (\$500), or by both imprisonment and fine.

(b) Any person who knowingly makes more than one application for aid under the provisions of this division with the intent of establishing multiple entitlements for any person for the same period or who makes an application for that aid for a fictitious or nonexistent person or by claiming a false identity for any person is guilty of a felony, punishable by imprisonment in the state prison for a period of 16 months, two years, or three years, a fine of not more than five thousand dollars (\$5,000), or by both imprisonment and fine, or by imprisonment in the county jail for a period of not more

1 than one year, or a fine of not more than one thousand
2 dollars (\$1,000), or by both imprisonment and fine.

3 (c) Whenever any person has, by means of false
4 statement or representation or by impersonation or other
5 fraudulent device, obtained or retained aid under the
6 provisions of this division for himself or herself or for a
7 child not in fact entitled thereto, the person obtaining this
8 aid shall be punished as follows:

9 (1) If the total amount of the aid obtained or retained
10 is four hundred dollars (\$400) or less, by imprisonment in
11 the county jail for a period of not more than six months,
12 a fine of not more than five hundred dollars (\$500), or by
13 both imprisonment and fine.

14 (2) If the total amount of the aid obtained or retained
15 is more than four hundred dollars (\$400), by
16 imprisonment in the state prison for a period of 16
17 months, two years, or three years, a fine of not more than
18 five thousand dollars (\$5,000), or by both imprisonment
19 and fine; or by imprisonment in the county jail for a
20 period of not more than one year, or a fine of not more
21 than one thousand dollars (\$1,000), or by both
22 imprisonment and fine.

23 (d) Any person who knowingly uses, transfers,
24 acquires, or possesses blank authorizations to participate
25 in the federal Food Stamp Program in any manner not
26 authorized by Chapter 10 (commencing with Section
27 18900) of Part 6 with the intent to defraud is guilty of a
28 felony, punishable by imprisonment in the state prison for
29 a period of 16 months, two years, or three years, a fine of
30 not more than five thousand dollars (\$5,000), or by both
31 imprisonment and fine.

32 (e) Any person who counterfeits or alters or
33 knowingly uses, transfers, acquires, or possesses
34 counterfeited or altered authorizations to participate in
35 the federal Food Stamp Program or food stamps in any
36 manner not authorized by the Food Stamp Act of 1964
37 (Public Law 88-525 and all amendments made thereto)
38 or the federal regulations pursuant to the act is guilty of
39 forgery.

1 (f) Any person who fraudulently appropriates food
2 stamps or authorizations to participate in the federal
3 Food Stamp Program with which he or she has been
4 entrusted pursuant to his or her duties as a public
5 employee is guilty of embezzlement of public funds.

6 (g) Whoever knowingly uses, transfers, sells,
7 purchases, or possesses food stamps or authorizations to
8 participate in the federal Food Stamp Program in any
9 manner not authorized by Chapter 10 (commencing with
10 Section 18900), of Part 6, or by the federal Food Stamp
11 Act of 1977 (Public Law 95-113 and all amendments made
12 thereto) is; (1) guilty of a misdemeanor if the face value
13 of the food stamps or the authorizations to participate is
14 four hundred dollars (\$400) or less, and shall be punished
15 by imprisonment in the county jail for a period of not
16 more than six months, a fine of not more than five
17 hundred dollars (\$500), or by both imprisonment and
18 fine, or (2) guilty of a felony if the face value of the food
19 stamps or the authorizations to participate exceeds four
20 hundred dollars (\$400), and shall be punished by
21 imprisonment in the state prison for a period of 16
22 months, two years, or three years, a fine of not more than
23 five thousand dollars (\$5,000), or by both imprisonment
24 and fine or by imprisonment in the county jail for a period
25 of not more than one year, or a fine of not more than one
26 thousand dollars (\$1,000), or by both imprisonment and
27 fine.

28 (h) (1) If the violation of subdivision (f) or (g) is
29 committed by means of an electronic transfer of benefits,
30 in addition and consecutive to the penalties for the
31 violation, or attempted violation, of those subdivisions,
32 the court shall impose the following punishment:

33 (A) If the electronic transfer of benefits exceeds fifty
34 thousand dollars (\$50,000), an additional term of one year
35 in state prison.

36 (B) If the electronic transfer of benefits exceeds one
37 hundred fifty thousand dollars (\$150,000), an additional
38 term of two years in state prison.

1 (C) If the electronic transfer of benefits exceeds one
2 million dollars (\$1,000,000), an additional term of three
3 years in state prison.

4 (D) If the electronic transfer of benefits exceeds two
5 million five hundred thousand dollars (\$2,500,000), an
6 additional term of four years.

7 (2) In any accusatory pleading involving multiple
8 charges of violations of subdivision (f) or (g), or both,
9 committed by means of an electronic transfer of benefits,
10 the additional terms provided in paragraph (1) may be
11 imposed if the aggregate losses to the victims from all
12 violations exceed the amounts specified in this paragraph
13 and arise from a common scheme or plan.

14 ~~SEC. 3.~~

15 *(i) A person who is punished by an additional term of*
16 *imprisonment under another provision of law for a*
17 *violation of subdivision (f) or (g) shall not receive an*
18 *additional term of imprisonment under subdivision (h).*

19 *SEC. 2.5. Section 10980 of the Welfare and Institutions*
20 *Code is amended to read:*

21 10980. (a) Any person who, willfully and knowingly,
22 with the intent to deceive, makes a false statement or
23 representation or knowingly fails to disclose a material
24 fact in order to obtain aid under the provisions of this
25 division or who, knowing he or she is not entitled thereto,
26 attempts to obtain aid or to continue to receive aid to
27 which he or she is not entitled, or to receive a larger
28 amount than that to which he or she is legally entitled, is
29 guilty of a misdemeanor, punishable by imprisonment in
30 the county jail for a period of not more than six months,
31 a fine of not more than five hundred dollars (\$500), or by
32 both ~~such~~ imprisonment and fine.

33 (b) Any person who knowingly makes more than one
34 application for aid under the provisions of this division
35 with the intent of establishing multiple entitlements for
36 any person for the same period or who makes an
37 application for ~~such~~ *that* aid for a fictitious or nonexistent
38 person or by claiming a false identity for any person is
39 guilty of a felony, punishable by imprisonment in the
40 state prison for a period of 16 months, two years, or three

1 years, a fine of not more than five thousand dollars
2 (\$5,000), or by both ~~such~~ imprisonment and fine, or by
3 imprisonment in the county jail for a period of not more
4 than one year, or a fine of not more than one thousand
5 dollars (\$1,000), or by both ~~such~~ imprisonment and fine.

6 (c) Whenever any person has, by means of false
7 statement or representation or by impersonation or other
8 fraudulent device, obtained or retained aid under the
9 provisions of this division for himself or herself or for a
10 child not in fact entitled thereto, the person obtaining
11 ~~such~~ *this* aid shall be punished as follows:

12 (1) If the total amount of ~~such~~ *the* aid obtained or
13 retained is four hundred dollars (\$400) or less, by
14 imprisonment in the county jail for a period of not more
15 than six months, a fine of not more than five hundred
16 dollars (\$500), or by both ~~such~~ imprisonment and fine.

17 (2) If the total amount of ~~such~~ *the* aid obtained or
18 retained is more than four hundred dollars (\$400), by
19 imprisonment in the state prison for a period of 16
20 months, two years, or three years, a fine of not more than
21 five thousand dollars (\$5,000), or by both ~~such~~
22 imprisonment and fine; or by imprisonment in the county
23 jail for a period of not more than one year, or a fine of not
24 more than one thousand dollars (\$1,000), or by both ~~such~~
25 imprisonment and fine.

26 (d) Any person who knowingly uses, transfers,
27 acquires, or possesses blank authorizations to participate
28 in the federal Food Stamp Program in any manner not
29 authorized by Chapter 10 (commencing with Section
30 18900) of Part 6 with the intent to defraud is guilty of a
31 felony, punishable by imprisonment in the state prison for
32 a period of 16 months, two years, or three years, a fine of
33 not more than five thousand dollars (\$5,000), or by both
34 ~~such~~ imprisonment and fine.

35 (e) Any person who counterfeits or alters or
36 knowingly uses, transfers, acquires, or possesses
37 counterfeited or altered authorizations to participate in
38 the federal Food Stamp Program or *to receive* food
39 stamps or *electronically transferred benefits* in any
40 manner not authorized by the Food Stamp Act of 1964

1 (Public Law 88-525 and all amendments made thereto)
2 or the federal regulations pursuant to the act is guilty of
3 forgery.

4 (f) Any person who fraudulently appropriates food
5 stamps, *electronically transferred benefits*, or
6 authorizations to participate in the federal Food Stamp
7 Program with which he or she has been entrusted
8 pursuant to his or her duties as a public employee is guilty
9 of embezzlement of public funds.

10 (g) Whoever knowingly uses, transfers, sells,
11 purchases, or possesses food stamps, *electronically*
12 *transferred benefits*, or authorizations to participate in
13 the federal Food Stamp Program in any manner not
14 authorized by Chapter 10 (commencing with Section
15 18900), of Part 6, or by the federal Food Stamp Act of 1977
16 (Public Law 95-113 and all amendments made thereto)
17 is; (1) guilty of a misdemeanor if the face value of the food
18 stamps *stamp benefits* or the authorizations to participate
19 is four hundred dollars (\$400) or less, and shall be
20 punished by imprisonment in the county jail for a period
21 of not more than six months, a fine of not more than five
22 hundred dollars (\$500), or by both ~~such~~ imprisonment
23 and fine, or (2) guilty of a felony if the face value of the
24 food stamps or the authorizations to participate exceeds
25 four hundred dollars (\$400), and shall be punished by
26 imprisonment in the state prison for a period of 16
27 months, two years, or three years, a fine of not more than
28 five thousand dollars (\$5,000), or by both ~~such~~
29 imprisonment and fine or by imprisonment in the county
30 jail for a period of not more than one year, or a fine of not
31 more than one thousand dollars (\$1,000), or by both ~~such~~
32 imprisonment and fine.

33 (h) (1) *If the violation of subdivision (f) or (g) is*
34 *committed by means of an electronic transfer of benefits,*
35 *in addition and consecutive to the penalties for the*
36 *violation, or attempted violation, of those subdivisions,*
37 *the court shall impose the following punishment:*

38 (A) *If the electronic transfer of benefits exceeds fifty*
39 *thousand dollars (\$50,000), an additional term of one year*
40 *in state prison.*

1 (B) If the electronic transfer of benefits exceeds one
2 hundred fifty thousand dollars (\$150,000), an additional
3 term of two years in state prison.

4 (C) If the electronic transfer of benefits exceeds one
5 million dollars (\$1,000,000), an additional term of three
6 years in state prison.

7 (D) If the electronic transfer of benefits exceeds two
8 million five hundred thousand dollars (\$2,500,000), an
9 additional term of four years.

10 (2) In any accusatory pleading involving multiple
11 charges of violations of subdivision (f) or (g), or both,
12 committed by means of an electronic transfer of benefits,
13 the additional terms provided in paragraph (1) may be
14 imposed if the aggregate losses to the victims from all
15 violations exceed the amounts specified in this paragraph
16 and arise from a common scheme or plan.

17 (i) A person who is punished by an additional term of
18 imprisonment under another provision of law for a
19 violation of subdivision (f) or (g) shall not receive an
20 additional term of imprisonment under subdivision (h).

21
22 SEC. 3. Section 2.5 of this bill incorporates
23 amendments to Section 10980 of the Welfare and
24 Institutions Code proposed by both this bill and AB 2772.
25 It shall only become operative if (1) both bills are enacted
26 and become effective on or before January 1, 1999, (2)
27 each bill amends Section 10980 of the Welfare and
28 Institutions Code, and (3) this bill is enacted after AB
29 2772, in which case Section 2 of this bill shall not become
30 operative.

31 SEC. 4. No reimbursement is required by this act
32 pursuant to Section 6 of Article XIII B of the California
33 Constitution because the only costs that may be incurred
34 by a local agency or school district will be incurred
35 because this act creates a new crime or infraction,
36 eliminates a crime or infraction, or changes the penalty
37 for a crime or infraction, within the meaning of Section
38 17556 of the Government Code, or changes the definition
39 of a crime within the meaning of Section 6 of Article
40 XIII B of the California Constitution.

1 Notwithstanding Section 17580 of the Government
2 Code, unless otherwise specified, the provisions of this act
3 shall become operative on the same date that the act
4 takes effect pursuant to the California Constitution.

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